

LAW OFFICE OF GABRIEL E. ESTADELLA PLLC

July 9, 2012

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room N406
Brooklyn, New York 11201

Re: *Santiago v. Cuomo, et al.*, 12 CV 2137 (KAM) (MDG)
Request for Pre-Motion Conference (Dispositive)

Dear Judge Matsumoto:

On June 18, 2012, this Court ordered the parties to advise whether any party intends to make a dispositive motion and whether a pre-motion conference is still necessary, not later than today, July 9, 2012. Plaintiff Jesus Santiago timely requests a pre-motion conference to file a motion for summary judgment, pursuant to Federal Rule of Civil Procedure 56.

The basis of plaintiff's motion is defendants' failure to address the terms of plaintiff's unlawfully imposed period of post-release supervision after April 29, 2008, when the New York State Court of Appeals issued opinions invalidating the administrative imposition of PRS in *People v. Sparber*, 10 N.Y.3d 457 (N.Y. 2008), and *Matter of Garner v. New York State Dep't of Corr. Servs.*, 10 N.Y.3d 358 (N.Y. 2008); or after June 30, 2008, when New York Correction Law § 601(d) went into effect. In this, defendants were at least grossly negligent. *See Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995) (citing gross negligence standard) (citation omitted), *overruled in part on other grounds as stated in Elufe v. Alyward*, No. 09-CV-458 (KAM) (LB), 2011 U.S. Dist. LEXIS 11037, at *21 (S.D.N.Y. Feb. 4, 2011) (citation omitted).

Because several defendants have not waived service of process, as requested by the undersigned counsel for plaintiff, and thus have not yet been served, the undersigned requests a briefing schedule beginning not earlier than August 20, 2012, and granting respondents fourteen (14) days to respond, and plaintiff seven (7) days from the filing of any opposition to reply.

Plaintiff likewise wishes to move for summary judgment due to defendants' failure to address the terms of plaintiff's unlawfully imposed period of post-release supervision after the issuance of *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006), particularly in light of The Honorable Shira A. Scheindlin's decision in *Bentley v. Dennison*, No. 11 CV 1056, 2012 U.S. Dist. LEXIS 17721 (S.D.N.Y. Feb. 10, 2012). However, an appeal of that decision is now pending in the United States Court of Appeals for the Second Circuit, in Case No. 12-741. Briefing in the appeal is

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ongoing. Hence, a motion in the present case with regards to *Earley* might be more appropriate after the decision on appeal.

Lastly, the undersigned requests leave to move to amend the caption in this case to reflect the caption of the Amended Complaint (#12) and the full names of defendants since obtained.

Respectfully,

/s/

Gabriel E. Estadella

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